copy of which was sent to the applicant by A. R. Registered. (See exhibit marked "NAM 2"). Again, his address remained the same in July 1974 as evidenced by the letter sent to the applicant marked "NAM 4" and A.R. card marked "NAM 5". Even as recent as August 6, 1974, it is obvious from the letter of the applicant's own solicitors marked "NAM 6" that the applicant was still in occupation of Room 307. I accept these documentary exhibits as more reliable than the contents of the affidavits affirmed by the applicant and the architect. In the event, I hold that at all material times the applicant was in occupation of Room 307 and that he had been properly served with the writ of summons at the said room on February 21, 1974, as alleged by the process server.

On the second ground that the letter of guarantee has been automatically revoked, I am of the view that having regard to the form of the letter of guarantee executed by the applicant, it is not a joint guarantee with the second defendant, but several. Even assuming that it is a joint guarantee, section 91 of the Contracts Act, 1950 (Revised — 1974) provides:

"Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties."

As such, I accept the submission of learned counsel for the respondent that English authorities on common law principle that the release of a joint guarantor without the consent of the other would release him from his obligation under the bond is not applicable in this country. [See *Song Bok Yoong* v. *Ho Kim Poui*].[1] In the circumstances, the respondent has a legal right to proceed against the applicant although the other guarantor (the second defendant) has been discharged. The applicant has not, therefore, shown a *prima facie* defence on the merits either in law or in fact.

The application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Chew & Co.; Lovelace & Hastings.*

ELECTRICAL INDUSTRY WORKERS UNION v. REGISTRAR OF TRADE UNIONS & ANOR.

[O.C.J. (Chang Min Tat J.) May 8, 1975]
[Kuala Lumpur — Originating Summons No. 354 of 1974]

Practice and Procedure — Originating Summons — Membership of trade union — Construction of rules — Trade Unions Ordinance, 1959, s. 2(2) — R.S.C. 1957, O.54 r.1 and O.54A.

This was an application by originating summons for construction and interpretation of the rules of a trade union and section 2(2) of the Trade Unions Ordinance Act 1959 and for a declaration *inter alia* that the applicant union had the exclusive right to decide whether members employed by a company was within the scope of membership of the said union under its rules. Objection was taken to the form of the action.

Held: the construction of the rules of a trade union could not come within O.54 r.1 of the R.S.C. The objection was well founded and therefore the application must be struck out and the applicants be given leave to proceed by action.

Case referred to:-

(1) *Sungai Wangi Estate* v. *Uni* [1975] 1 M.L.J. 136.

ORIGINATING SUMMONS.

D. P. Vijandran for the applicants.

Zaleha bte. Zahari (Federal Counsel) for the respondents.

Chang Min Tat J.: This was an application by Originating Summons under the provisions of Order 54A of the Rules of the Supreme Court for certain declaratory orders. The first two orders sought involved the construction of Rule 3(1) of the Rules of the Electrical Industry Workers Union and the next two the interpretation of section 2(2) of the Trade Unions Ordinance, 1959.

The declarations asked for, as amended, are in these terms:—

"a) A declaration that the Applicant Union has the exclusive power to decide whether the workers employed by the company registered as Monsanto Electronic Sdn. Bhd. are within the scope of membership of the said Union under Rule 3(1) of the Union's Rules.

b) A declaration that the said Union is entitled to register the said workers as its members.

c) A declaration that the Registrar of Trade Unions is not empowered under section 2(2) of the Trade Unions Ordinance, 1959 or at all to rule on the eligibility of the said workers to join the said Union.

d) A declaration that the Registrar of Trade Unions has no power under section 2(2) of the Trade Union Ordinance or at all to forbid the said Union from taking in the said workers as its members."

The matter arose from the attempt by the Union to absorb into its fold the workers employed by Monsanto Electronics Sdn. Bhd. The Union thought that these workers came within its membership clause, as being persons engaged in similar trades, occupations or industries. The Registrar of Trade Unions thought otherwise. In his view electronic was not synonymous with electrical and a worker employed by that firm did not come within the definition of worker in the Union's rules. He therefore refused to allow the enlistment of the workers of the Monsanto Electronics Sdn. Bhd. into the Electrical Industry Workers Union.

In so doing, he purported to act under section 2(2) of the Trade Unions Ordinance 1959 which reads:—

"2(2) For the purposes of the definition of 'trade union' in sub-section (1) and for the purposes of sections 72 and 74, 'similar' means similar in the opinion of the Registrar."

It should be noted at this stage that his opinion was not conclusive. Section 17(1) of the Trade Unions Ordinance gives a right of appeal to the Minister of Labour and Manpower within 30 days against his decision. Section 17(4) provides that the decision of the Minister on appeal shall be final and shall not be called into question in any court.

No objection was taken however by the respondents upon the ground that the proper recourse of the applications was by way of appeal from the decision of the Registrar to the Minister or that the court was not by statutory intervention properly seized of the matter, until, at the least, the Minister had made his order.

Objection was however taken to the form of the application. It was argued as a preliminary point that the application did not properly come within the scope of Order 54A of the Rules of the Supreme Court and that in the absence of any provision for such a matter, the application should be by action. This objection was founded on the recent judgment of my brother Abdoolcader J. in *Sungai Wangi Estate* v. *Uni*.[1] But in that case, what the learned judge held was that no declaration could be applied for by way of originating motion save in such cases as have been expressly provided for by statute.

Insofar as an originating summons under O.54A is concerned, the decision must be determined by the consideration whether the subject-matter came within the provisions of this Order.

Mr. D.P. Vijandran contended that the construction of the rules of the trade union came within O.54 r.1, but to my mind, the rules could not, by the *ejusdem generis* principle of construction, come within the "deed, will or other written instrument" in that rule.

The application of the second set of orders said to involve the construction of section 2(2) of the Trade Unions Ordinance could by the provisions of Rule 1A be brought on an originating summons, but if I am right in using the *ejusdem generis* rule, then my decision must necessarily affect it.

I took the further view that it would not be possible to divorce the consideration of the application from certain facts pertaining to the work of electrical workers and the work of electronic workers respectively and in all the circumstances of the case, thought the objection well-founded. I therefore struck out the application and allowed, though I should have thought no leave was necessary, the applicants to proceed by action. The applicants will now determine whether they wish to do so.

Order accordingly.

Solicitors: *Vijandran & Zulkifli.*

METAL INDUSTRY EMPLOYEES UNION v. REGISTRAR OF TRADE UNIONS & ORS.

[O.C.J. (Wan Suleiman F.J.) May 14, 1975]
[Kuala Lumpur — Originating Summons No. 371 of 1973]

Practice and Procedure — Originating Summons — Application for declaratory orders — Alternative remedy provided by law — Trade Unions Ordinance 1959, s. 17 — R.S.C. 1957, O.54A.

This was an application by originating summons for declaratory orders on the rules of a trade union and certain provisions of the Trade Unions Ordinance 1959. The respondent objected to the form of the application.

Held: the court should not be invited to make the declaration sought since an alternative remedy was clearly prescribed by the law by way of appeal to the Minister under section 17 of the Trade Unions Ordinance, 1959.

Cases referred to:-

(1) *Lewis* v. *Green* [1905] 2 Ch. 340.

(2) *Manggai* v. *Government of Sarawak & Anor.* [1970] 2 M.L.J. 41.

(3) *Wilkinson* v. *Barking Corporation* [1948] 1 K.B. 721, 724.

(4) *Foh Hup Omnibus Co. Bhd.* v. *Minister of Labour & Manpower & Anor.* [1973] 2 M.L.J. 38.

ORIGINATING SUMMONS.

D. P. Vijandran for the applicants.

Lim Beng Choon (Senior Federal Counsel) for the first and second respondents.

M. Shanker for the third respondent.

Wan Suleiman F.J. (delivering judgment on preliminary objection): The applicants in this Originating Summons seek the following orders and reliefs:—

a) A declaration that the workers of the Selangor Pewter Company Sdn. Bhd. are workers engaged in the metal industry.

b) A declaration that the workers employed by Selangor Pewter Company Sdn. Bhd. are within the scope of membership of the Metal Industry Employees' Union under Rule 3(1) of its Rules.

c) A declaration that the Metal Industry Employees' Union is entitled to register the said workers as its members.

d) A declaration that the Registrar of Trade Unions is not empowered under section 2(2) of the Trade Unions Ordinance, 1959 or any other legal provision to rule that the workers of the Selangor Pewter Co. Sdn. Bhd. cannot properly be members of the Metal Industry Employees' Union.

The respondents raised a preliminary objection. Firstly it was contended on their behalf that Order 54A of the Rules of the Supreme Court under which this application is being made is only intended to enable the court to proceed where its decision will settle the litigation between the parties, and not for consideration of questions which will only start litigation if the decision is made in a particular way. For this proposition counsel for the respondents rely on the case of *Lewis* v. *Green*,[1] which it seems to me applies to Rule 1 of the Order but not to Rule 1A, the particular rule which applies to this application, since it involves the construction of a statute, to wit, Trade Unions Ordinance, 1959. Accordingly I am unable to agree with this part of respondents' contention.